

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER, State Bar No. 226937
Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 355-5437
Facsimile: (415) 703-5480
6

Attorneys for Complainant
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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Petition to Revoke Probation
11 Against:

Case No. 2005-61

12 **PHYLLIS R. NIMER**
P. O. Box 1522
13 Colma, California 94014

**PETITION TO REVOKE
PROBATION**

14 Registered Nurse License No. 585764

15 Respondent.
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17 Complainant alleges:

18 **PARTIES**

- 19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Petition to
20 Revoke Probation solely in her official capacity as the Executive Officer of the Board of
21 Registered Nursing, Department of Consumer Affairs.
- 22 2. On or about August 17, 2001, the Board of Registered Nursing issued
23 Registered Nurse License Number 585764 to Phyllis R. Nimer (Respondent). The Registered
24 Nurse License expired on November 30, 2006, and has not been renewed.
- 25 3. In a disciplinary action entitled "In the Matter of Accusation Against
26 Phyllis R. Nimer," Case No. 2005-61, the Board of Registered Nursing ("Board") and
27 Respondent entered into a Stipulated Settlement and Disciplinary Order, effective March 17,
28 2006, in which Respondent's Registered Nurse License was revoked. However, the revocation

1 was stayed and Respondent was placed on probation for a period of three (3) years with certain
2 terms and conditions. A copy of that Stipulated Settlement and Disciplinary Order is attached as
3 Exhibit A and is incorporated by reference.

4 JURISDICTION

5 4. This Petition to Revoke Probation is brought before the Board of
6 Registered Nursing (Board), Department of Consumer Affairs, under the authority of the
7 following laws. All section references are to the Business and Professions Code unless otherwise
8 indicated.

9 STATUTORY PROVISIONS

10 5. Section 2750 of the Business and Professions Code (Code) provides, in
11 pertinent part, that the Board may discipline any licensee, including a licensee holding a
12 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
13 2750) of the Nursing Practice Act.

14 6. Section 2764 of the Code provides, in pertinent part, that the expiration of
15 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
16 against the licensee or to render a decision imposing discipline on the license. Under section
17 2811(b) of the Code, the Board may renew an expired license at any time within eight years after
18 the expiration.

19 7. Section 118(b) of the Code provides, in pertinent part, that the expiration
20 of a license shall not deprive the Registrar of jurisdiction to proceed with a disciplinary action
21 during the period within which the license may be renewed, restored, reissued or reinstated.

22 PETITION TO REVOKE PROBATION

23 8. Grounds exist for revoking the probation and reimposing the order of
24 revocation of Respondent's Registered Nurse License in that Respondent has violated the terms
25 and conditions of probation as set forth in the paragraphs below.

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1 **FIRST CAUSE TO REVOKE PROBATION**

2 (Failure to Comply With Terms and Conditions of Probation)

3 9. At all times after the effective date of Respondent's probation, Condition

4 Two stated:

5 **Comply With The Board's Probation Program:** Respondent shall fully comply
6 with the conditions of the Probation Program established by the Board and
7 cooperate with representatives of the Board in its monitoring and investigation of
8 the respondent's compliance with the Board's Probation Program. Respondent
shall inform the Board in writing within no more than 15 days of any address
change and shall at all times maintain an active, current license status with the
Board, including during any period of suspension.

9 10. Respondent's probation is subject to revocation because she failed to comply with
10 Probation Condition Two, referenced above. The facts and circumstances regarding this
11 violation are as follows:

12 A. Respondent let her nursing license expire on November 30, 2006.
13 Respondent failed to maintain an active, current license status with the Board.

14 B. Respondent failed to timely inform the Board of her change in
15 address.

16 C. Respondent fully comply with the conditions of the Probation
17 Program as described in paragraphs 11-28, below.

18 **SECOND CAUSE TO REVOKE PROBATION**

19 (Failure to Appear at Orientation Meetings)

20 11. At all times after the effective date of Respondent's probation, Condition

21 Three stated:

22 **Report in Person:** Respondent, during the period of probation, shall appear in
23 person at interviews/ meetings as directed by the Board or its designated
representatives.

24 12. Respondent's probation is subject to revocation because she failed to
25 comply with Probation Condition Three, referenced above. The facts and circumstances
26 regarding this violation are as follows:

27 A. On or about April 19, 2006, Respondent failed to appear in person
28 for her required orientation meeting.

1 B. On or about August 8, 2006, Respondent failed to appear in person
2 for her required orientation meeting.

3 **THIRD CAUSE TO REVOKE PROBATION**

4 (Submit Written Reports)

5 13. At all times after the effective date of Respondent's probation, Condition
6 Five stated:

7 **Submit Written Reports:** Respondent, during the period of probation, shall
8 submit or cause to be submitted such written reports/declarations and verification
9 of actions under penalty of perjury, as required by the Board. These
10 reports/declarations shall contain statements relative to respondent's compliance
11 with all the conditions of the Board's Probation Program. Respondent shall
12 immediately execute all release of information forms as may be required by the
13 Board or its representatives.

14 Respondent shall provide a copy of this decision to the nursing regulatory agency
15 in every state and territory in which he or she has a registered nurse license

16 14. Respondent's probation is subject to revocation because she failed to
17 comply with Probation Condition Five, referenced above. The facts and circumstances regarding
18 this violation are as follows: Respondent failed to submit the four (4) required quarterly reports
19 in 2007. Respondent failed to submit a report for the period of January-March 2007. Respondent
20 failed to submit a report for the period of April-June 2007. Respondent failed to submit a report
21 for the period of July-September 2007. Respondent failed to submit a report for the period of
22 October- December 2007.

23 **FOURTH CAUSE TO REVOKE PROBATION**

24 (Failure to Work as a Registered Nurse)

25 15. At all times after the effective date of Respondent's probation, Condition
26 Six stated:

27 **Function as a Registered Nurse:** Respondent, during the period of probation,
28 shall engage in the practice of registered nursing in California for a minimum of
29 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered
nursing" may include, when approved by the Board, volunteer work as a
registered nurse, or work in any non-direct patient care position that requires
licensure as a registered nurse.

1 The Board may require that advanced practice nurses engage in advanced practice
2 nursing for a minimum of 24 hours per week for 6 consecutive months or as
determined by the Board.

3 If respondent has not complied with this condition during the probationary term,
4 and the respondent has presented sufficient documentation of his or her good faith
5 efforts to comply with this condition, and if no other conditions have been
6 violated, the Board, in its discretion, may grant an extension of the respondent's
probation period up to one year without further hearing in order to comply with
this condition. During the one year extension, all original conditions of probation
shall apply.

7 16. Respondent's probation is subject to revocation because she failed to
8 comply with Probation Condition Six, referenced above. Respondent failed to work as a
9 registered nurse for a minimum of 24 hours a week for six continuous months.

10 **FIFTH CAUSE TO REVOKE PROBATION**

11 (Cost Recovery)

12 17. At all times after the effective date of Respondent's probation, Condition
13 Eleven stated:

14 **Cost Recovery:** Respondent shall pay to the Board costs associated with its
15 investigation and enforcement pursuant to Business and Professions Code Section
16 125.3 in the amount of \$2,000. Respondent shall be permitted to pay these costs
in a payment plan approved by the Board, with payments to be completed no later
than three months prior to the end of the probation term.

17 If respondent has not complied with this condition during the probationary term,
18 and respondent has presented sufficient documentation of his or her good faith
19 efforts to comply with this condition, and if no other conditions have been
20 violated, the Board, in its discretion, may grant an extension of the respondent's
probation period up to one year without further hearing in order to comply with
this condition. During the one year extension, all original conditions of probation
will apply.

21 18. Respondent's probation is subject to revocation because she failed to
22 comply with Probation Condition Eleven, referenced above. Respondent failed to pay the Board
23 the cost recovery amount of \$2,000.

24 **SIXTH CAUSE TO REVOKE PROBATION**

25 (Physical Evaluation)

26 19. At all times after the effective date of Respondent's probation, Condition
27 Fourteen stated:

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1 **Physical Examination:** Within 45 days of the effective date of this decision,
2 respondent, at her expense, shall have a licensed physician, nurse practitioner, or
3 physician assistant, who is approved by the Board before the assessment is
4 performed, submit an assessment of the respondent's physical condition and
5 capability to perform the duties of a registered nurse. Such an assessment shall be
6 submitted in a format acceptable to the Board.

7 If respondent is determined to be unable to practice safely as a registered nurse,
8 the licensed physician, nurse practitioner, or physician assistant making this
9 determination shall immediately notify the Board and respondent by telephone,
10 and the Board shall request that the Attorney General's office prepare an
11 accusation or petition to revoke probation. Respondent shall immediately cease
12 practice and shall not resume practice until notified by the Board. During this
13 period of suspension, respondent shall not engage in any practice for which a
14 license issued by the Board is required until the Board has notified respondent that
15 a medical determination permits respondent to resume practice. This period of
16 suspension will not apply to the reduction of this probationary time period.

17 If the respondent fails to have the above assessment submitted to the Board within
18 the 45-day requirement, respondent shall immediately cease practice and shall not
19 resume practice until notified by the Board. This period of suspension will not
20 apply to the reduction of this probationary time period. The Board may waive or
21 postpone this suspension only if significant, documented evidence of mitigation is
22 provided. Such evidence must establish good faith efforts by the respondent to
23 obtain the assessment, and a specific date for compliance must be provided. Only
24 one such waiver or extension may be permitted.

25 20. Respondent's probation is subject to revocation because she failed to
26 comply with Probation Condition Fourteen, referenced above, by failing to submit a physical
27 evaluation.

28 **SEVENTH CAUSE TO REVOKE PROBATION**

(Rehabilitation Program)

 21. At all times after the effective date of Respondent's probation, Condition
Fifteen stated:

Participate in Treatment/rehabilitation Program For Chemical Dependence:
Respondent, at her expense, shall successfully complete during the probationary
period or shall have successfully completed prior to commencement of probation
a Board-approved treatment/rehabilitation program of at least six months duration.
As required, reports shall be submitted by the program on forms provided by the
Board. If respondent has not completed a Board-approved
treatment/rehabilitation program prior to commencement of probation,
respondent, within 45 days from the effective date of the decision, shall be
enrolled in a program. If a program is not successfully completed within the first
nine months of probation, the Board shall consider respondent in violation of
probation.

Based on Board recommendation, each week respondent shall be required to
attend at least one, but no more than five 12-step recovery meetings or equivalent

(e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

22. Respondent's probation is subject to revocation because she failed to comply with Probation Condition Fifteen, referenced above. Respondent failed to verify participation in a rehabilitation program.

EIGHTH CAUSE TO REVOKE PROBATION

(Biological Fluid Testing)

23. At all times after the effective date of Respondent's probation, Condition Seventeen stated:

Submit to Tests And Samples: Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

24. Respondent's probation is subject to revocation because she failed to comply with Probation Condition Seventeen, referenced above. Respondent failed to comply with the random, biological fluid testing or drug testing program. Respondent has failed to participate in a random, biological fluid testing or drug testing program.

NINTH CAUSE TO REVOKE PROBATION

(Mental Health Evaluation)

25. At all times after the effective date of Respondent's probation, Condition Eighteen stated:

Mental Health Examination: The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

26. Respondent's probation is subject to revocation because she failed to comply with Probation Condition Eighteen, referenced above. Respondent failed to submit a mental health evaluation.

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1 **TENTH CAUSE TO REVOKE PROBATION**

2 (On-Going Therapy)

3 27. At all times after the effective date of Respondent's probation, Condition
4 Nineteen stated:

5 **Therapy or Counseling Program:** Respondent, at her expense, shall participate
6 in an on-going counseling program until such time as the Board releases her from
7 this requirement and only upon the recommendation of the counselor. Written
8 progress reports from the counselor will be required at various intervals.

9 28. Respondent's probation is subject to revocation because she failed to
10 comply with Probation Condition Nineteen, referenced above. Respondent failed to submit
11 verification of on-going therapy or a counseling program.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein
14 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

15 1. Revoking the probation that was granted by the Board of Registered
16 Nursing in Case No. 2005-61 and imposing the disciplinary order that was stayed thereby
17 revoking Registered Nurse License No. 585764 issued to Phyllis R. Nimer;

18 2. Revoking or suspending Registered Nurse License No. 585764, issued to
19 Phyllis R. Nimer;

20 3. Taking such other and further action as is deemed necessary and proper.

21 DATED: 5/12/08


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RUTH ANN TERRY, M.P.H., R.N.
25 Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant

Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2005-61

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PHYLLIS R. NIMER
PO Box 1522
Colma, CA 94014

Registered Nurse License No. 585764

Respondent

Case No. 2005-61

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on March 17, 2006.

IT IS SO ORDERED February 15, 2006.



Vice-President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BILL LOCKYER, Attorney General
of the State of California
GLORIA A. BARRIOS, State Bar No. 94811
Deputy Attorney General
California Department of Justice
1515 Clay Street, 20th Floor ~ P. O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2144
Facsimile: (510) 622-2272
E-mail: gloria.barrios@doj.ca.gov

Attorneys for Complainant

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No.: 2005-61

PHYLLIS R. NIMER
P.O. BOX 1522
Colma, CA 94014

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

Registered Nurse License No. 585764

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties
to the above-entitled proceedings that the following matters are true:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
the Board of Registered Nursing. She brought this action solely in her official capacity and
is represented in this matter by Bill Lockyer, Attorney General of the State of California,
by Gloria A. Barrios, Deputy Attorney General.

2. Respondent Phyllis R. Nimer (Respondent) is representing herself in this
proceeding.

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3. On or about August 17, 2001, the Board of Registered Nursing issued Registered Nurse License No. 585764 to Phyllis R. Nimer (Respondent). The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2005-61 and will expire on November 30, 2006, unless renewed.

JURISDICTION

4. Accusation No. 2005-61 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 23, 2004. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2005-61 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2005-61. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge in paragraph 13 in Accusation No. 2005-61. Respondent neither admits nor denies the charge in paragraph 12 in

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1 Accusation No. 2005-61, but understands and agrees that if proven at hearing, constitute cause
2 for imposing discipline upon her Registered Nurse License.

3 9. Respondent agrees that her Registered Nurse License is subject to discipline and
4 she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary
5 Order below.

6 **CONTINGENCY**

7 10. This stipulation shall be subject to approval by the Board of Registered Nursing.
8 Respondent understands and agrees that counsel for Complainant and the staff of the Board
9 of Registered Nursing may communicate directly with the Board regarding this stipulation
10 and settlement, without notice to or participation by Respondent. By signing the stipulation,
11 Respondent understands and agrees that she may not withdraw her agreement or seek to rescind
12 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt
13 this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall
14 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
15 between the parties, and the Board shall not be disqualified from further action by having
16 considered this matter.

17 11. The parties understand and agree that facsimile copies of this Stipulated
18 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
19 force and effect as the originals.

20 12. In consideration of the foregoing admissions and stipulations, the parties agree
21 that the Board may, without further notice or formal proceeding, issue and enter the following
22 Disciplinary Order:

23 **DISCIPLINARY ORDER**

24 IT IS HEREBY ORDERED that Registered Nurse License No. 585764 issued to
25 Respondent Phyllis R. Nimer is revoked. However, the revocation is stayed and Respondent is
26 placed on probation for three (3) years on the following terms and conditions.

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Severability Clause:

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws:**

Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders:

If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program:**

Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

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1 3. **Report in Person:**

2 Respondent, during the period of probation, shall appear in person at
3 interviews/meetings as directed by the Board or its designated representatives.

4 4. **Residency, Practice, or Licensure Outside of State:**

5 Periods of residency or practice as a registered nurse outside of California
6 shall not apply toward a reduction of this probation time period. Respondent's probation is
7 tolled, if and when she resides outside of California. Respondent must provide written notice
8 to the Board within 15 days of any change of residency or practice outside the state, and
9 within 30 days prior to re-establishing residency or returning to practice in this state.

10 Respondent shall provide a list of all states and territories where she has ever
11 been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
12 provide information regarding the status of each license and any changes in such license status
13 during the term of probation. Respondent shall inform the Board if she applies for or obtains
14 a new nursing license during the term of probation.

15 5. **Submit Written Reports:**

16 Respondent, during the period of probation, shall submit or cause to be
17 submitted such written reports/declarations and verification of actions under penalty of perjury,
18 as required by the Board. These reports/declarations shall contain statements relative to
19 Respondent's compliance with all the conditions of the Board's Probation Program.
20 Respondent shall immediately execute all release of information forms as may be required
21 by the Board or its representatives.

22 Respondent shall provide a copy of this Decision to the nursing regulatory
23 agency in every state and territory in which she has a registered nurse license.

24 6. **Function as a Registered Nurse:**

25 Respondent, during the period of probation, shall engage in the practice of
26 registered nursing in California for a minimum of 24 hours per week for 6 consecutive months
27 or as determined by the Board.

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1 For purposes of compliance with the section, "engage in the practice of registered
2 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
3 work in any non-direct patient care position that requires licensure as a registered nurse.

4 The Board may require that advanced practice nurses engage in advanced practice
5 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by
6 the Board.

7 If Respondent has not complied with this condition during the probationary term,
8 and Respondent has presented sufficient documentation of her good faith efforts to comply
9 with this condition, and if no other conditions have been violated, the Board, in its discretion,
10 may grant an extension of Respondent's probation period up to one year without further hearing
11 in order to comply with this condition. During the one year extension, all original conditions
12 of probation shall apply.

13 7. **Employment Approval and Reporting Requirements:**

14 Respondent shall obtain prior approval from the Board before commencing
15 or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause
16 to be submitted to the Board all performance evaluations and other employment related reports
17 as a registered nurse upon request of the Board.

18 Respondent shall provide a copy of this Decision to her employer and immediate
19 supervisors prior to commencement of any nursing or other health care related employment.

20 In addition to the above, Respondent shall notify the Board in writing within
21 seventy-two (72) hours after she obtains any nursing or other health care related employment.
22 Respondent shall notify the Board in writing within seventy-two (72) hours after she is
23 terminated or separated, regardless of cause, from any nursing, or other health care related
24 employment with a full explanation of the circumstances surrounding the termination or
25 separation.

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1 8. **Supervision:**

2 Respondent shall obtain prior approval from the Board regarding Respondent's
3 level of supervision and/or collaboration before commencing or continuing any employment
4 as a registered nurse, or education and training that includes patient care.

5 Respondent shall practice only under the direct supervision of a registered nurse
6 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
7 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
8 are approved.

9 Respondent's level of supervision and/or collaboration may include, but is not
10 limited to the following:

11 (a) **Maximum:**

12 The individual providing supervision and/or collaboration is present in the
13 patient care area or in any other work setting at all times.

14 (b) **Moderate:**

15 The individual providing supervision and/or collaboration is in the patient
16 care unit or in any other work setting at least half the hours Respondent works.

17 (c) **Minimum:**

18 The individual providing supervision and/or collaboration has person-to-
19 person communication with Respondent at least twice during each shift worked.

20 (d) **Home Health Care:**

21 If Respondent is approved to work in the home health care setting,
22 the individual providing supervision and/or collaboration shall have person-to-person
23 communication with Respondent as required by the Board each work day. Respondent shall
24 maintain telephone or other telecommunication contact with the individual providing supervision
25 and/or collaboration as required by the Board during each work day. The individual providing
26 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits
27 to patients' homes visited by Respondent with or without Respondent present.

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1 9. **Employment Limitations:**

2 Respondent shall not work for a nurse's registry, in any private duty position
3 as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house
4 nursing pool.

5 Respondent shall not work for a licensed home health agency as a visiting nurse
6 unless the registered nursing supervision and other protections for home visits have been
7 approved by the Board. Respondent shall not work in any other registered nursing occupation
8 where home visits are required.

9 Respondent shall not work in any health care setting as a supervisor of registered
10 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
11 nurses and/or unlicensed assistive personnel on a case-by-case basis.

12 Respondent shall not work as a faculty member in an approved school of nursing
13 or as an instructor in a Board approved continuing education program.

14 Respondent shall work only on a regularly assigned, identified and predetermined
15 worksite(s) and shall not work in a float capacity.

16 If Respondent is working or intends to work in excess of 40 hours per week,
17 the Board may request documentation to determine whether there should be restrictions on the
18 hours of work.

19 10. **Complete a Nursing Course(s):**

20 Respondent, at her own expense, shall enroll and successfully complete a
21 course(s) relevant to the practice of registered nursing no later than six months prior to the end
22 of her probationary term.

23 Respondent shall obtain prior approval from the Board before enrolling in the
24 course(s). Respondent shall submit to the Board the original transcripts or certificates of
25 completion for the above required course(s). The Board shall return the original documents
26 to Respondent after photocopying them for its records.

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11. **Cost Recovery:**

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$2,000.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

12. **Violation of Probation:**

If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

13. **License Surrender:**

During Respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed

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appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(a) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(b) One year for a license surrendered for a mental or physical illness.

14. **Physical Examination:**

Within 45 days of the effective date of this Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the Respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified Respondent that a medical determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to have the above assessment submitted to the Board within the 45 day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

15. **Participate in Treatment/Rehabilitation Program for Chemical Dependence:**

Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If Respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider Respondent in violation of probation.

Based on Board recommendation, each week Respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

16. **Abstain from Use of Psychotropic (Mood-Altering) Drugs:**

Respondent shall completely abstain from the possession, injection or consumption by any route of all controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally

1 authorized to do so as part of documented medical treatment. Respondent shall have sent
2 to the Board, in writing and within fourteen (14) days, by the prescribing health professional,
3 a report identifying the medication, dosage, the date the medication was prescribed, the
4 Respondent's prognosis, the date the medication will no longer be required, and the effect
5 on the recovery plan, if appropriate.

6 Respondent shall identify for the Board a single physician, nurse practitioner
7 or physician assistant who shall be aware of Respondent's history of substance abuse and
8 will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
9 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
10 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
11 condition. If any substances considered addictive have been prescribed, the report shall identify
12 a program for the time limited use of any such substances.

13 The Board may require the single coordinating physician, nurse practitioner,
14 or physician assistant to be a specialist in addictive medicine, or to consult with a specialist
15 in addictive medicine.

16 17. **Submit to Tests and Samples:**

17 Respondent, at her expense, shall participate in a random, biological fluid testing
18 or a drug screening program which the Board approves. The length of time and frequency will be
19 subject to approval by the Board. Respondent is responsible for keeping the Board informed of
20 Respondent's current telephone number at all times. Respondent shall also ensure that messages
21 may be left at the telephone number when she is not available and ensure that reports are
22 submitted directly by the testing agency to the Board, as directed. Any confirmed positive
23 finding shall be reported immediately to the Board by the program and Respondent shall be
24 considered in violation of probation.

25 In addition, Respondent, at any time during the period of probation, shall fully
26 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
27 tests and samples as the Board or its representatives may require for the detection of alcohol,
28 narcotics, hypnotics, dangerous drugs, or other controlled substances.

1 If Respondent has a positive drug screen for any substance not legally authorized
2 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
3 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
4 from practice pending the final decision on the petition to revoke probation or the accusation.
5 This period of suspension will not apply to the reduction of this probationary time period.

6 If Respondent fails to participate in a random, biological fluid testing or drug
7 screening program within the specified time frame, Respondent shall immediately cease practice
8 and shall not resume practice until notified by the Board. After taking into account documented
9 evidence of mitigation, if the Board files a petition to revoke probation or an accusation,
10 the Board may suspend Respondent from practice pending the final decision on the petition to
11 revoke probation or the accusation. This period of suspension will not apply to the reduction
12 of this probationary time period.

13 18. **Mental Health Examination:**

14 Respondent shall, within 45 days of the effective date of this Decision,
15 have a mental health examination including psychological testing as appropriate to determine
16 her capability to perform the duties of a registered nurse. The examination will be performed by
17 a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board.
18 The examining mental health practitioner will submit a written report of that assessment
19 and recommendations to the Board. All costs are the responsibility of Respondent.
20 Recommendations for treatment, therapy or counseling made as a result of the mental health
21 examination will be instituted and followed by Respondent.

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1 If Respondent is determined to be unable to practice safely as a registered nurse,
2 the licensed mental health care practitioner making this determination shall immediately notify
3 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
4 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
5 practice and may not resume practice until notified by the Board. During this period of
6 suspension, Respondent shall not engage in any practice for which a license issued by the Board
7 is required, until the Board has notified Respondent that a mental health determination permits
8 Respondent to resume practice. This period of suspension will not apply to the reduction of this
9 probationary time period.

10 If Respondent fails to have the above assessment submitted to the Board
11 within the 45 day requirement, Respondent shall immediately cease practice and shall not resume
12 practice until notified by the Board. This period of suspension will not apply to the reduction
13 of this probationary time period. The Board may waive or postpone this suspension only if
14 significant, documented evidence of mitigation is provided. Such evidence must establish good
15 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
16 provided. Only one such waiver or extension may be permitted.

17 19. **Therapy or Counseling Program:**

18 Respondent, at her expense, shall participate in an on-going counseling
19 program until such time as the Board releases her from this requirement and only upon the
20 recommendation of the counselor. Written progress reports from the counselor will be required
21 at various intervals.

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DATED: 11/2/03

BILL LOCKYER, Attorney General
of the State of California

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 11/3/05

Attorneys for Complainant

BILL LOCKYER, Attorney General
of the State of California
GLORIA A. BARRIOS, State Bar No. 94811
Deputy Attorney General
California Department of Justice
1515 Clay Street, 20th Floor ~ P. O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2144
Facsimile: (510) 622-2121

Attorneys for Complainant

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2005-61

PHYLLIS R. NIMER
860 Campus Drive #221
Daly City, CA 94015

ACCUSATION

15 Como Ave., No. 309
Daly City, CA 94014
Registered Nurse License No. 585764

Respondent.

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On or about August 17, 2001, the Board of Registered Nursing issued Registered Nurse License No. 585764 to Phyllis R. Nimer (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2004, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 2750 of the Code provides, in pertinent part, that the Board may take disciplinary action against any licensee, including a licensee holding a temporary or inactive license, for any reason provided in the Nursing Practice Act.

5. Section 2761(a) of the Code provides, in pertinent part, that the board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for unprofessional conduct, which includes, but is not limited to certain enumerated conduct.

6. Section 2762 of the Code provides, in pertinent part, that unprofessional conduct within the meaning of the Nursing Practice Act includes any of the following:

“(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022.

“(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.”

7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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DRUGS

8. "Marijuana" is a Schedule I controlled substance pursuant to Health and Safety Code section 11054(d)(13) and a dangerous drug pursuant to Business and Professions Code section 4022.

9. "Ecstasy" is a Schedule I controlled substance pursuant to Health and Safety Code section 11054(d)(6) and a dangerous drug pursuant to Business and Professions Code section 4022.

10. "Methamphetamine" is a Schedule II controlled substance pursuant to Health and Safety Code section 11052(d)(2) and a dangerous drug pursuant to Business and Professions Code section 4022.

11. "Morphine Sulfate" is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(m) and a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE
(False or Grossly Inconsistent Record Entries)
(Bus. & Prof. Code §2762(e))

12. Respondent is subject to disciplinary action under section 2761(a) of the Code, in conjunction with section 2762(e) of the Code, for making false, grossly incorrect inconsistent, or unintelligible entries in a hospital, patent, or other record pertaining to a controlled substance in that while employed as a Staff Nurse in the Emergency Room at Kaiser Medical Center (Hospital), in South San Francisco, California, she committed the following acts:

a. On or about July 28, 2002, at 0525 hours, respondent signed out 10 mg of Morphine Sulfate to be administered to patient A and charted the administration of 4 mg of Morphine Sulfate to the patient at 0535 hours. Respondent failed to document or otherwise account for the disposition of 6 mg of Morphine Sulfate.

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SECOND CAUSE FOR DISCIPLINE
(Unlawful Obtaining/Possessing)
(Bus. & Prof. Code §2762 (a))

13. Respondent is subject to disciplinary action under section 2761(a) of the Code, in conjunction with section 2762(a) of the Code, for unlawfully obtaining, possessing, and self-administering controlled substances, as more particularly set forth as follows:

a. On or about February 25, 2003, respondent unlawfully obtained, possessed and self-administered Marijuana and Methamphetamine in that respondent tested positive for the presence of said controlled substances on said date.

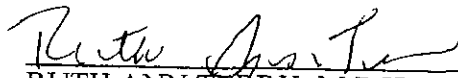
b. On or about November and December 2002, respondent by her own admission, unlawfully self-administered Ecstasy on various weekends during said time frame.

PRAYER

WHEREFORE, complainant requests that a hearing be held on the matters herein alleged and that, following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License No. 585764 issued to Phyllis R. Nimer;
2. Ordering Phyllis R. Nimer to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case pursuant to Code section 125.3; and
3. Taking such other and further action as may be deemed necessary or proper.

DATED: 9/17/04


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

Complainant